



Suite 800
1919 Pennsylvania Avenue N.W.
Washington, D.C. 20006-3401

Ryan M. Appel
202-973-4292 tel
202-973-4492 fax

ryanappel@dwt.com

July 10, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**Re: Crown Castle Fiber LLC v. Commonwealth Edison Company,
Proceeding Number 19-169
Bureau ID Number EB-19-MD-004**

Ms. Dortch:

Pursuant to 47 C.F.R. § 1.730(h), Crown Castle Fiber LLC submits the attached Motion to Compel Answers to Complainant's First Set of Interrogatories filed in the above-referenced proceeding.

Davis Wright Tremaine LLP

A handwritten signature in blue ink, reading 'Ryan M. Appel'.

Ryan M. Appel

Cc: Service List

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

CROWN CASTLE FIBER LLC,

Complainant,

v.

COMMONWEALTH EDISON COMPANY,

Respondent.

Proceeding Number 19-169

Bureau ID Number EB-19-MD-004

**MOTION TO COMPEL ANSWERS TO COMPLAINANT’S FIRST SET OF
INTERROGATORIES**

Crown Castle Fiber LLC (“Crown Castle”), by and through undersigned counsel, and pursuant to 47 C.F.R. § 1.730(h), respectfully submits this Motion to Compel Answers to Complainant’s First Set of Interrogatories. As set forth below, Respondent Commonwealth Edison Company (“ComEd”) has refused to timely respond to any of Crown Castle’s First Set of Interrogatories solely on the ground that ComEd filed a Motion To Dismiss. In so doing, ComEd effectively grants itself a stay, contrary to the Commission’s Rules and the Commission’s Orders in this case. Accordingly, ComEd should be ordered to immediately, and in no event later than within 2 days, respond fully to each and every one of Crown Castle’s First Set of Interrogatories.

Pursuant to Section 1.730 of the Commission’s Rules, Crown Castle served with its Complaint its First Set of Interrogatories. On June 26, 2019, ComEd filed and served objections to Crown Castle’s Interrogatories, and on June 28, 2019, Crown Castle filed responses to ComEd’s specific objections.

On June 28, 2019, ComEd filed a Motion to Dismiss For Lack of Jurisdiction and a parallel Motion to Hold Proceedings in Abeyance in the above-referenced proceeding. According to 47 C.F.R. § 1.729(d), “the filing of a motion to dismiss does not suspend any other filing deadlines under the Commission’s rules, unless staff issues an order suspending such deadlines.”¹ Indeed, the Commission stated in its Letter Order dated June 26, 2019 that the schedule in the above-referenced proceeding “will remain in effect unless otherwise suspended.”²

On July 10, 2019, the Commission denied ComEd’s Motion to Hold Proceedings in Abeyance.³ Because the Commission did not suspend the schedule of this proceeding, the Commission’s filing deadlines remain in effect.

Rule 1.730(c) requires ComEd to answer Crown Castle’s First Set of Interrogatories, which were served on June 19, 2018, within 20 days.⁴ ComEd’s Responses to Complainant’s First Set of Interrogatories, which were submitted on July 9, 2019, do not constitute “answers” to Crown Castle’s First Set of Interrogatories under Rule 1.730(c). Rather, ComEd’s filing merely restates ComEd’s general jurisdictional objection that it raised on June 26, 2019⁵ and indicates that ComEd will not provide responses unless and until the FCC determines that it has

¹ 47 C.F.R. § 1.729(d).

² FCC Letter Order from Lisa J. Saks, Assistant Chief, Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission, Proceedings 19-169; 19-170, Bureau ID Numbers EB-19-MD-004; EB-19-MD-005 (June 26, 2019).

³ E-mail from Lisa J. Saks, Assistant Chief, Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission, Proceedings 19-169; 19-170, Bureau ID Numbers EB-19-MD-004; EB-19-MD-005 (July 10, 2019 12:26 EDT).

⁴ 47 C.F.R. § 1.730(c).

⁵ ComEd’s Objections to Complainant’s First Set of Interrogatories pp. 1-2.

jurisdiction over this dispute.⁶ With that refusal to respond, ComEd is taking self-help by disregarding the Commission's Rules, scheduling Order, and ultimately granting itself the Abeyance that the Commission has now denied. The refusal to respond is unjustified.

Crown Castle respectfully requests that the Commission (1) overrule all of ComEd's objections to Crown Castle's Interrogatories, and (2) order ComEd to immediately, and in no event later than within two days, fully respond to each and every one of Crown Castle's First Set of Interrogatories in Proceeding 19-169.

Respectfully submitted,

/s/ T. Scott Thompson
T. Scott Thompson
Ryan M. Appel
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006
202-973-4200 (Main Phone)
202-973-4499 (Main Fax)
scottthompson@dwt.com (Email)

Attorneys for Crown Castle Fiber LLC

Robert Millar
Rebecca Hussey
Crown Castle Fiber LLC

July 10, 2019

⁶ ComEd's Responses to Complainant's First Set of Interrogatories.

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2019, I caused a copy of the foregoing Motion to Compel Answers to Complainant's First Set of Interrogatories to be served on the following (service method indicated):

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(ECFS)

Lisa J. Saks
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Lisa.Saks@fcc.gov
(E-Mail)

Anthony DeLaurentis
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Anthony.DeLaurentis@fcc.gov
(E-Mail)

Bradley R. Perkins
Assistant General Counsel, Regulatory
ComEd
10 South Dearborn Street
49th Floor
Chicago, IL 60603
Bradley.Perkins@exeloncorp.com
(E-mail)

Thomas B. Magee
Keller and Heckman LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Magee@khlaw.com
(E-mail)

Timothy A. Doughty
Keller and Heckman LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Doughty@khlaw.com
(E-mail)

/s/ T. Scott Thompson
T. Scott Thompson